Builders Distributors Sand and Gravel, Inc. ***and*** **Dennie Chartier** ***and*** **Tom Enlow.** Cases 19-CA-12121 and 19-CA-12577

July 29, 1981

DECISION AND ORDER

On December 29, 1980, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Builders Distributors Sand and Gravel, Inc., Lynwood, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.[2]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent also excepts to the Administrative Law Judge's finding regarding jurisdiction. Respondent contends that although it admitted gross sales in excess of $500,000 during the year immediately preceding the issuance of the complaint, at least $50,000 of which sales were to customers outside the State of Washington or to customers within the State of Washington who were themselves engaged in interstate commerce, the Board should not exercise jurisdiction because Respondent's business is "purely local in character." This exception fails to recognize that "where a party contests the Board's assertion of jurisdiction under its discretionary standards, the issue must be timely raised." *Pollack Electric Co., Inc.*, 214 NLRB 970, fn. 4 (1974). Here the Regional Director in his order consolidating cases, consolidated complaint, and notice of hearing asserted jurisdiction over Respondent. Respondent admitted jurisdiction, and did not contest it at the pre-trial or trial stage of the hearing. Respondent did not timely raise its exception to jurisdiction.

We conclude that Respondent may not at this time relitigate whether it meets the discretionary standards. See also *Prestige Hotels, Inc., d/b/a Marie Antoinette Hotel*, 125 NLRB 207, 208-209 (1959). To the extent that Respondent now contests the Board's statutory jurisdiction, we find that, in light of its earlier admission of the complaint's factual allegations regarding jurisdiction, its unsupported contention that the Board lacks statutory jurisdiction is clearly without merit.

In Member Jenkins' view, because the asserted lawful reason for the discharge of Chartier and Enlow was plainly pretextual, that is, specious and fabricated, the Administrative Law Judge's reliance on *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), is inappropriate. Where the defense is found to be pretextual, it is *ipso facto* rejected and the burden of proof and sufficiency of rebuttal analysis of *Wright Line* can add nothing.

[2] Member Jenkins, in accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), would award backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: This case was heard in Seattle, Washington, on August 28, 1980. The charge in Case 19-CA-12121 was filed on February 20, 1980, by Dennis Chartier, an individual. A complaint was issued thereon on April 1, 1980. The charge in Case 19-CA-12577 was filed on July 3, 1980, by Thomas Enlow, an individual. An order consolidating cases and consolidated complaint issued on August 11, 1980, alleging that Builders Distributors Sand and Gravel, Inc., herein called Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended.

Issues

The primary issues are:

1. Whether Respondent violated Section 8(a)(1) of the Act by coercively interrogating and threatening employees concerning union activity and by engaging in surveillance of their union activity.

2. Whether Respondent violated Section 8(a)(3) and (1) of the Act by discharging Dennis Chartier and Tom Enlow because of their union activity.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record[1] of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Washington corporation with an office and place of business in Lynwood, Washington, is engaged in the wholesale and retail sale of building supplies and sand and gravel. During the year immediately preceding issuance of the complaint, Respondent had gross sales of goods and services valued in excess of $500,000. During the same period of time, Respondent sold and shipped goods or provided services from its facilities within Washington to customers outside Washington, or sold and shipped goods or provided services for customers within Washington, which customers were themselves engaged in interstate commerce by means other than indirect means of a total value in excess of $50,000. The complaint alleges, the answer admits, and I find that

[1] The joint motion of the General Counsel and Respondent to correct the transcript of the record is hereby granted.

Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The answer admits and I find that Teamsters Union Local 38, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and 8(a)(1) Allegations*

1. Factual findings

Respondent buys sand and gravel from other companies and resells and delivers it to its own customers. In addition, it rents out some of its trucks. Respondent operates about 17 trucks and employs about that number of drivers.

In September 1979 employee Dennis Chartier contacted the Union about organizing Respondent's facility.[2] However, after speaking to a number of the other drivers, he decided to take no immediate action. In December 1979 a number of the employees once again began talking about the Union. In early February 1980 Dennis Chartier and Thomas Enlow spoke to Union Business Representative Bob Schultz, and a meeting was scheduled for 8 p.m. on February 12, 1980, at Chartier's apartment. Chartier discussed the upcoming meeting with a number of employees.

About 4 p.m. on February 12, 1980, Chartier was discharged by Respondent's president, Jerry Morey.[3] The circumstances of that discharge are discussed in detail below.

When Chartier left Morey's office on February 12, he went into the company yard where he spoke to Enlow. He told Enlow that Morey had let him go because of his union dealings. Enlow replied that he would talk to the drivers and see if they still wanted to have the meeting. He spoke to some of the drivers and was told by them that they had heard that if they went to the union meeting they would be fired.

Later that day Enlow went into the company office to leave some paperwork and to sign out. Other employees, including Noel Graham and Bob Mullins, were also there. Company President Morey told the employees that there was supposed to be a union meeting that night and that if anyone went that person was going to be "down the road."[4] Morey specifically asked Enlow whether Enlow was going to be at the meeting, and Enlow replied that he was not.[5]

At or about 5:30 or 6 p.m. on February 12 employee Robert Miller returned to the yard with his truck and took his paperwork into the dispatch office where he had a conversation with Morey. In the course of discussing the truck that was to be assigned to Miller the following day, Morey mentioned that Chartier had been laid off. Miller asked why, and Morey replied that it was because of a lack of work. When Miller smiled, Morey asked Miller if he knew anything about Chartier's organizing a meeting. Miller replied that he did not know anything about it.[6]

Enlow went to Chartier's house at or about 8 p.m. on February 12 to attend the meeting. Other than Chartier no one else was there. While they were in Chartier's apartment, Chartier and Enlow saw Morey's car outside the apartment house. Morey acknowledged in his testimony that he and Respondent's general manager, Richard MacDonald,[7] drove to Chartier's apartment house after they learned that there was to be a union meeting at that location. He also testified that he drove to Chartier's house because he wanted to know which employees were going to attend the meeting.

At or about 8:15 p.m. on the same night MacDonald called employee Noel Graham on the telephone. MacDonald asked Graham whether Graham was going to attend the union meeting, and Graham replied that he was not. MacDonald then asked Graham who was going to attend the meeting and said that all of those who did attend were going to be laid off. He also said that he and Morey had cruised by Chartier's apartment to see who was attending the meeting. MacDonald told Graham that he was calling around to see who was at home and who was going to attend the meeting. In addition, MacDonald said that if the employees tried to bring in the Union they would be laid off, that they would lose all their time, and that the Company would close down before going union.[8]

When no one else appeared at the meeting, Enlow and Chartier called Union Business Representative Schultz, who told them that there were not enough people to have a meeting and that the meeting was therefore canceled.

On February 13 Enlow had a conversation with Morey in Morey's office. Morey said that five drivers had told him that Enlow had organized a union meeting.

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[2] Years ago the Union had represented Respondent's employees, but for many years before the incidents in this case Respondent had been operating nonunion.

[3] Respondent admits and I find that Morey is a supervisor within the meaning of the Act.

[4] "Down the road" is an expression frequently used in the industry to indicate discharge.

[5] These findings are based on the testimony of Enlow. Morey denied that he talked to anyone about the Union. There were a number of inconsistencies between Morey's testimony at the hearing and an affidavit he had previously given to the General Counsel. With regard to interrogation he testified that he did not ask anyone about the Union. However, in the affidavit he averred that he might have asked an employee what was going on with the union meeting. In his testimony at the hearing he averred that he did not remember telling anyone in particular that he would sell his business. In the affidavit he averred, "I have also said that I would sell my business rather than have a union come in and tell me how to run it." When questioned about the discrepancy between his testimony and the affidavit, Morey was extremely evasive and his demeanor did not inspire confidence in his veracity. I credit Enlow over Morey.

[6] These findings are based on the testimony of Miller. Morey testified that he never interrogated any employee about union activities. I credit Miller over Morey.

[7] Respondent admits and I find that MacDonald was a supervisor within the meaning of the Act.

[8] These findings are based on the testimony of Graham. MacDonald in his testimony denied asking Graham whether Graham was going to the meeting and also denied that he ever interrogated an employee about that employee's union organizational activity. Between Graham and MacDonald I credit Graham.

Enlow asked who the drivers were and Morey did not reply. Enlow denied that he had organized the meeting. Morey then said that he was going to talk to the same drivers again and that if they gave him the same story Enlow was going to be down the road. Enlow again denied that he was involved with the Union.[9]

Later that day Enlow felt badly about lying to Morey concerning his union activity. He sought Morey out and told him that he had tried to organize the men but only to go to a meeting so that they could vote for themselves. Morey said that he would think it over and that he would decide later.

On or about February 14 or 15 Miller spoke to Morey in Morey's office. Morey asked Miller what made Chartier want to go union. Miller replied that he had no idea. Morey then said that he could sell his trucks and equipment and retire and that he would do so before he would go union.[10]

2. Analysis and conclusions

On February 12, 1980, Company President Morey interrogated employee Enlow as to whether Enlow was going to a union meeting. During the same conversation, Morey threatened to fire Enlow and other employees if they attended the union meeting.

On February 12 Morey interrogated employee Miller concerning what Miller knew about employee Chartier's organizing activity.

On February 12, General Manager MacDonald interrogated employee Graham concerning whether he or other employees were going to attend a union meeting. During that same conversation, MacDonald threatened to lay off employees who tried to bring a union in and threatened that the Company would close before it went union.

On February 13, Morey told employee Enlow that he had been told by other employees that Enlow had arranged a union meeting. That remark called for and received a response from Enlow and was a form of interrogation. During the same conversation, Morey threatened to discharge Enlow for organizing a union meeting.

On February 14 or 15, Morey interrogated employee Miller concerning why Chartier wanted to go union. During the same conversation, Morey threatened Miller with plant closure by telling him that he could sell his trucks and equipment and retire and that he would do so before going union.

Particularly in the light of the totality of Respondent's conduct herein, the interrogation of employees concerning union activity as described above was coercive and in violation of Section 8(a)(1) of the Act.[11]

The threats described above, to the effect that Respondent would discharge employees for engaging in union activities, also violated Section 8(a)(1) of the Act. In addition, the threats described above, to the effect that Respondent would sell its trucks and equipment and go out of business before going union, constituted a violation of Section 8(a)(1) of the Act.[12]

Company President Morey admitted that on February 12 he drove to employee Chartier's house where a union meeting was to be held because he wanted to know which employees were going to the meeting. Morey's conduct constituted unlawful surveillance of the union activity of employees in violation of Section 8(a)(1) of the Act.

B. *The Discharge of Dennis Chartier*

1. The General Counsel's case

Dennis Chartier was employed by Respondent from October 1977 until his discharge on February 12, 1980. He was one of the key union activists. In September 1979 he contacted Union Business Representative Schultz, but, after meeting with the other drivers, decided not to pursue the matter. In December 1979 Chartier spoke to Enlow and other employees about organizing a union. On or about February 6, 1980, Chartier once again contacted Union Business Representative Schultz. This time a meeting was scheduled for at 8 p.m. on February 12, 1980, at Chartier's house. Chartier discussed the upcoming meeting with a number of other employees. At about 4 p.m. on February 12, which was about 4 hours before the union meeting was scheduled to take place at Chartier's house, Chartier was called into the office of Respondent's president, Morey. Morey handed Chartier a termination slip which stated that the termination was due to a lack of work. Chartier asked whether that was the real reason for the termination. Morey said that he had heard from the drivers that there was going to be a union meeting at Chartier's house, and he answered Chartier's question by saying, "[N]o, it's not, the real reason is that you want the union. So, now I'm going to let you be union, but you're not going to through me."[13]

Chartier was a key union activist. The Company harbored a virulent animosity against employees who engaged in union activity. It demonstrated that animosity by engaging in unlawful interrogation, threats, and surveillance. On February 6, 1980, Chartier agreed to have a union meeting at his house and employees were notified of that meeting. Morey acknowledged to Chartier in the termination interview that he had heard from the drivers that there was going to be a meeting at Chartier's

[9] These findings are based on the testimony of Enlow. Morey testified that he never talked to anyone about the Union. I credit Enlow and do not credit Morey.

[10] This finding is based on the testimony of Miller. To the extent that Morey's testimony is inconsistent with Miller's, I credit Miller.

[11] *PPG Industries, Inc. Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980); *Pacific Intermountain Express*, 250 NLRB 1451 (1980).

[12] The threat to close down before going union was an impermissible threat of economic reprisal to be taken solely on Respondent's own volition and, as such, constituted a threat in violation of Sec. 8(a)(1) of the Act. *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 617–620 (1969); *Hanover House Industries, Inc.*, 233 NLRB 164 (1977); *Joseph Macaluso, Inc., d/b/a Lemon Tree*, 231 NLRB 1168, 1169 (1977), enfd. 618 F.2d 51 (9th Cir. 1980).

[13] These findings are based on the testimony of Chartier. Morey testified that he did not know of any union activity at the time of Chartier's discharge and that in the termination interview he simply told Chartier that he was laid off because of a lack of work. As indicated above, I have reservations concerning the reliability of Morey's testimony. The discrepancies between his affidavit and his testimony as well as his attempts to explain those discrepancies cast doubt on his candor. I credit Chartier over Morey.

house. Thus, Morey did have knowledge of Chartier's union activity before the discharge. Morey then admitted to Chartier that Chartier was being discharged because of his union activity. Counsel for the General Counsel has established a very strong *prima facie* showing that Chartier was discharged because of his union activity.

2. Respondent's defense

Beginning in December 1979, Respondent's business began to show unprecedented losses. Respondent's president, Morey, testified to the following: In early February 1980 Morey's accountant told him that he had to do something about the losses immediately. On or about February 7 or 8, 1980, Morey decided to lay off employees in order to reduce the drivers' hours and cut payroll costs. He went over the list of drivers to see who the Company would least miss. He chose Chartier for the layoff because Chartier had a poor attitude toward his work, he did not take proper care of his equipment, and he often came to work late. When Chartier was hired in October 1977, he did a good job, but during the last 6 months to a year before his discharge his attitude deteriorated and he did not care about anything. Morey had spoken to him about that several times.

On February 11, 1980, Morey held a safety meeting for all the drivers. They met after work and were not paid for the time. During that meeting, Morey spoke about the cost to the Company of accidents, and he specifically named Chartier and Enlow as two drivers who had cost the Company a lot of money. Chartier left before the meeting was over. That evening Morey called Chartier on the telephone and criticized him for leaving the meeting early. Chartier replied that everyone at the meeting was just reminiscing, that he was tired and hungry, and that his girlfriend was waiting for him outside and he thought the meeting was over.[14]

Respondent's general manager, MacDonald, testified that he had received a complaint about Chartier's driving from the highway patrol and that he himself had observed Chartier tailgating cars and switching lanes.

Respondent has adduced testimony to indicate that it was not satisfied with Chartier's work or attitude. It has also established that it was having financial difficulties. However, there is a fatal flaw in Respondent's defense. Respondent contends that the layoff was necessitated by its need to reduce the drivers' hours and costs, and that Chartier's work habits were considered only with regard to which driver should be laid off. However, Respondent's records, though they show variations from week to week, indicate that during this period the overall drivers' hours were increasing rather than decreasing.[15] Even more critical, Respondent's records indicate that a new driver, Ed Long, was hired on February 13, 1980, just 1 day after Chartier was discharged. Long was an experienced driver as was Chartier and he received the same pay as Chartier. Apparently, when it hired Long on February 13, Respondent felt the need to increase the drivers' hours. Its claim that it felt that it had to reduce the drivers' hours the previous day by discharging Chartier is simply not credible.

3. Analysis and conclusions

In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980),[16] the Board applied the "test of causation" that has been set out by the United States Supreme Court in *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274 (1977), and in reliance on that decision held:

> Thus, for the reasons set forth above, we shall henceforth employ the following causation test in all cases alleging violation of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.[14]

As set forth above, the General Counsel has made a *prima facie* showing sufficient to support the inference that Chartier's union activity was a motivating factor in Respondent's decision to discharge him. Also as set forth above, Respondent's defense does not withstand scrutiny, and Respondent has not demonstrated that the discharge would have taken place even in the absence of Chartier's union activity. I therefore find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Chartier because of his union activity.

C. *The Discharge of Enlow*

1. The General Counsel's case

Thomas Enlow was employed as a truckdriver by Respondent from early August 1979 until his discharge on February 29, 1980.

Enlow was a key union activist. In December 1979 he spoke to 9 or 10 of the approximately 15 drivers working for Respondent about unionization. In early February, after Chartier had contacted Union Business Representative Schultz, Schultz called Enlow. Enlow was instru-

[14] Morey testified that in that telephone conversation Chartier was insubordinate and cursed at him. I credit Chartier's version of the conversation, which is set forth above.

[15] Respondent's general manager, MacDonald, testified that the drivers' hours for the fourth quarter of 1979 were 7,677, for the first quarter of 1980 (the quarter in which the discharges took place) were 9,927, and for the second quarter of 1980 were 10,107.

[14] In this regard we note that in those instances where, after all the evidence has been submitted, the employer has been unable to carry its burden, we will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. It is enough that the employees' protected activities are causally related to the employer action which is the basis of the complaint. Whether that "cause" was the straw that broke the camel's back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act.

[16] See also *Weather Tamer, Inc. and Tuskegee Garment Corporation*, 253 NLRB 293 (1980).

mental in scheduling the union meeting for February 12, 1980, at Chartier's apartment.

As set forth above, Respondent harbored virulent animosity against employees who engaged in union activity. That animosity was expressed in unlawful threats, interrogation, and surveillance, as well as by the unlawful discharge of Chartier because of Chartier's union activity. On February 12, Respondent's president, Morey, interrogated Enlow as to whether Enlow was going to attend the union meeting. In the same conversation Morey told Enlow and other employees that anyone who went to the meeting would be fired. Enlow went to the union meeting at Chartier's apartment that evening. Morey engaged in unlawful surveillance of that meeting. The following day, February 13, Morey told Enlow that five drivers had told him that Enlow had organized the union meeting. When Enlow denied it, Morey said that he was going to talk to the drivers again and that if they gave him the same story Enlow was going to be fired. Enlow again denied that he was involved with the Union. Later that day Enlow felt bad about lying to Morey about his union activity and told Morey that he did try to organize the men but only to go to a meeting so that they could vote for themselves. Morey said that he would think it over and that he would decide later. From February 14 until his discharge on February 29 Respondent only called Enlow in to work on a intermittent basis. Before that he had worked regularly. On February 29 he was given a layoff slip stating that he was being laid off because of a lack of work. He has not worked since that time.

The facts set forth above establish a strong *prima facie* showing that Enlow was discharged because of his union activity.

2. Respondent's defense

Respondent's defense with regard to Enlow is substantially the same as it was with regard to Chartier. Respondent contends that it decided that a layoff was necessary for purely economic reasons, and that Enlow was chosen for the layoff because the Company would miss him less than the other drivers. Morey testified that Enlow had too many accidents, that he had been caught in a coffeeshop when he should have been working, that he did not take care of his equipment, and that he was often late for work. Enlow was involved in accidents in April and December 1979 and on January 30, 1980. On February 11, 1980, Morey held a safety meeting in which Enlow and Chartier were named in connection with accident problems. However, no threat was made to discharge either of them because of the accidents. Enlow was discharged almost a month after the last accident.

Respondent's defense with regard to Enlow is unconvincing for the same reasons that the Chartier defense failed. Respondent does not contend that Enlow was discharged for poor work in itself. He was discharged according to Respondent because of a need to reduce the drivers' hours caused by Respondent's adverse economic position, and his work was considered only with regard to deciding which of the employees were to be let go. As set forth above, during the critical period the tendency was for Respondent to increase rather than to decrease the drivers' hours. In addition, Respondent hired a new driver, Pete Hersch, on February 22, 1980. That was after Respondent began to use Enlow only on an intermittent basis and only 7 days before Enlow was discharged. Hersch was an experienced driver and received the same pay that Enlow had received. The hire of Hersch at that time refutes Respondent's contention that it had to fire Enlow because of the need to reduce the drivers' hours.

3. Analysis and conclusions

The test set forth in *Wright Line, supra*, as detailed above, applies to Enlow as it did to Chartier. As set forth above, the General Counsel has made out a *prima facie* showing sufficient to support the inference that Enlow's union activity was a motivating factor in Respondent's decision to discharge him. Respondent's defense does not withstand scrutiny, and Respondent has not demonstrated that the discharge would have taken place even in the absence of Enlow's union activity. I find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Enlow because of his union activity.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discharged Chartier and Enlow in violation of Section 8(a)(3) and (1) of the Act, I recommend that Respondent be ordered to offer them reinstatement and to make them whole for any loss of wages and other benefits resulting from their discharges by payment to each of them of a sum of money equal to the amount he normally would have earned as wages and other benefits from the date of his discharge to the date upon which reinstatement is offered, less net earnings during that period. The amount of backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[17]

It is further recommended that Respondent be ordered to preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

[17] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by:

(a) Coercively interrogating employees about union activities.

(b) Threatening to discharge employees for engaging in union activities.

(c) Threatening to sell its trucks and equipment and to go out of business before going union.

(d) Engaging in surveillance of the union activities of its employees.

4. Respondent violated Section 8(a)(3) and (1) of the Act by discharging Chartier and Enlow because of their union activities.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and on the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[18]

The Respondent, Builders Distributors Sand and Gravel, Inc., Lynwood, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee for engaging in activity on behalf of Teamsters Union Local 38, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other union.

(b) Coercively interrogating any employee about union activity.

(c) Threatening to discharge any employee for engaging in union activity.

(d) Threatening to sell its trucks and equipment and to go out of business before going union.

(e) Engaging in surveillance of the union activity of any of its employees.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Dennis Chartier and Tom Enlow full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole, with interest, for lost earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(c) Post at its Lynwood, Washington, place of business copies of the attached notice marked "Appendix."[19] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[19] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in activity on behalf of Teamsters Union Local 38, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other union.

WE WILL NOT coercively interrogate any employee about union activity.

WE WILL NOT threaten to discharge any employee for engaging in union activity.

WE WILL NOT threaten to sell our trucks and equipment and to go out of business before going union.

WE WILL NOT engage in surveillance of the union activity of any of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

WE WILL offer full reinstatement to Dennis Chartier and Tom Enlow with backpay plus interest.

BUILDERS DISTRIBUTORS SAND AND GRAVEL, INC.